

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3 REZA ZANDIAN A/K/A/  
4 GOLAMREZA ZANDIANJAZI A/K/A  
5 GHOLAM REZA ZANDIAN A/K/A  
6 REZA JAZI A/K/A J. REZA JAZI,  
7 A/K/A/ G. REZA JAZI A/K/A/  
8 GHONOREZA ZANDIAN JAZI, AN  
9 INDIVIDUAL,

10                                   Appellant,

11 vs.

12 JED MARGOLIN, AN INDIVIDUAL,

13                                   Respondent.

**Supreme Court No. 65205**

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14                                   Appeal from the First Judicial District Court of the State of Nevada  
15                                   In and For Carson City  
16                                   The Honorable James T. Russell, District Judge

17                                   **RESPONDENT’S ANSWERING BRIEF**

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## STATEMENT OF THE ISSUES

1  
2 1. The District Court did not abuse its discretion in denying Defendant  
3 Reza Zandian’s (“Zandian”) motion to set aside the default judgment.  
4

## STATEMENT OF FACTS

### I. Factual Background

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6  
7 Plaintiff Jed Margolin (“Margolin”) is the named inventor on United States  
8 Patent No. 5,566,073 (“the ‘073 Patent”), United States Patent No. 5,904,724 (“the  
9 ‘724 Patent”), United States Patent No. 5,978,488 and United States Patent No.  
10 6,377,436 (collectively “the Patents”).<sup>1</sup> In 2004, Margolin granted Optima  
11 Technology Group (hereinafter “OTG”), a company specializing in aerospace  
12 technology, a power of attorney regarding the Patents.<sup>2</sup> Subsequently, Margolin  
13 assigned the ‘073 and ‘724 patents to OTG.<sup>3</sup>  
14  
15

16 In May 2006, OTG and Margolin licensed the ‘073 and ‘724 Patents to  
17 Geneva Aerospace, Inc., and Margolin received a royalty payment pursuant to a  
18 royalty agreement between Margolin and OTG.<sup>4</sup> On or about October 2007, OTG  
19 licensed the ‘073 Patent to Honeywell International, Inc., and Margolin received a  
20 royalty payment pursuant to a royalty agreement between Margolin and OTG.<sup>5</sup>  
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<sup>1</sup> See J.A. at Vol. I, 171; J.A. at Vol. III, 494.

<sup>2</sup> See J.A. at Vol. I, 171.

<sup>3</sup> See J.A. at Vol. I, 171.

<sup>4</sup> See J.A. at Vol. I, 171.

<sup>5</sup> See J.A. at Vol. I, 171.

1 On or about December 5, 2007, Zandian signed and filed assignment  
2 documents with the United States Patent and Trademark Office (“USPTO”),  
3 fraudulently assigning all four of the Patents to Optima Technology Corporation  
4 (“OTC”), a company owned by Zandian.<sup>6</sup> Shortly thereafter, on November 9,  
5 2007, Margolin, Robert Adams, and OTG were named as defendants in a case  
6 titled *Universal Avionics Systems Corporation v. Optima Technology Group, Inc.*,  
7 No. CV 07-588-TUC-RCC (the “Arizona action”).<sup>7</sup> Zandian was not a party in the  
8 Arizona action.<sup>8</sup> The plaintiff in the Arizona action asserted Margolin and OTG  
9 were not the owners of the ‘073 and ‘724 Patents, and OTG filed a cross-claim for  
10 declaratory relief against OTC in order to obtain legal title to the respective  
11 patents.<sup>9</sup>

12  
13  
14  
15 On August 18, 2008, the Arizona court expressly found OTC had no interest  
16 in the ‘073 or ‘724 Patents and the assignment documents filed with the USPTO  
17 were “forged, invalid, void, of no force and effect.”<sup>10</sup> The Arizona court’s findings  
18 show Zandian and/or the corporate Defendants do not own the patents and the  
19 record Zandian cites to, J.A. at Vol. II, 194-293, does not support Zandian’s  
20 argument. In fact, the record shows Zandian stated, “Margolin was the rightful  
21  
22

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23 <sup>6</sup> See J.A. at Vol. I, 61-70, 9-10, 41-42; J.A. Vol. II, 207-208; J.A. at Vol. III, 534-  
24 535; see also J.A. at Vol. IV, 660-661 (showing Zandian’s same signature).

25 <sup>7</sup> See J.A. at Vol. I, 171-172; J.A. at Vol. I, 22-27.

<sup>8</sup> See J.A. at Vol. I, 22-42; J.A. at Vol. III, 500-532.

<sup>9</sup> See J.A. at Vol. I, 22-42, 171-172; J.A. at Vol. III, 500-532.

1 owner of Patents Nos. 5,566,073 and 5,904,724, dated July 20, 2004.”<sup>11</sup> Zandian’s  
2 purported ownership is not supported by the record.

3  
4 Due to Zandian’s fraudulent acts, title to the Patents was clouded and  
5 interfered with Margolin’s and OTG’s ability to license the Patents.<sup>12</sup> In addition,  
6 during the period of time Margolin worked to correct record title of the Patents in  
7 the Arizona action and with the USPTO, he incurred significant litigation and other  
8 costs associated with those efforts.<sup>13</sup>  
9

## 10 **II. Procedural Background**

11 Margolin filed a complaint against Zandian on December 11, 2009.<sup>14</sup> On  
12 January 8, 2010, Margolin’s counsel sent a letter to Zandian’s counsel and  
13 requested assistance in serving Zandian.<sup>15</sup> Zandian’s counsel did not respond and  
14 the complaint was personally served on Zandian on February 2, 2010.<sup>16</sup> Zandian  
15 did not answer or respond in any way.<sup>17</sup> Default was entered against Zandian on  
16 December 2, 2010, and Plaintiff filed and served a notice of entry of default on  
17 December 7, 2010 and on his last known attorney on December 16, 2010.<sup>18</sup> The  
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21 <sup>10</sup> See J.A. at Vol. I, 9-10, 41-42; J.A. at Vol. II, 207-208; J.A. at Vol. III, 534-535.

22 <sup>11</sup> See J.A. at Vol. II, 196.

23 <sup>12</sup> See J.A. at Vol. I, 172; J.A. at Vol. III, 495-496; J.A. at Vol. III, 481-487.

24 <sup>13</sup> See J.A. at Vol. I, 172; J.A. at Vol. III, 495-496; J.A. at Vol. III, 481-493.

25 <sup>14</sup> See J.A. at Vol. I, 1-10.

<sup>15</sup> See J.A. at Vol. I, 46, 79-90.

<sup>16</sup> See J.A. at Vol. I, 11-14; *see also* Respondent’s Appendix (“R.A.”) at Vol. I, 12.

<sup>17</sup> See R.A. at Vol. I, 13.

<sup>18</sup> See R.A. at Vol. I, 13.



1 same history follows the Optima Technology Corporation Defendants.<sup>19</sup>

2 On February 28, 2011, Margolin filed an application for default judgment.<sup>20</sup>

3 On March 1, 2011, a default judgment was entered against all Defendants.<sup>21</sup> On  
4 March 7, 2011, notice of entry of default judgment was filed.<sup>22</sup>

5 On June 9, 2011, Zandian filed a motion to dismiss and to set aside the  
6 default judgment.<sup>23</sup> Zandian argued he was not served with the summons and  
7 complaint, but acknowledged his residency “was at all times in California.”<sup>24</sup> He  
8 also argued Nevada did not have personal jurisdiction over him.<sup>25</sup>

9 On June 22, 2011, Margolin filed an opposition to the motion to dismiss.<sup>26</sup>  
10 Margolin argued Zandian was served and the District Court had jurisdiction.<sup>27</sup>  
11 Margolin pointed out Zandian’s counsel refusal to respond to the request to assist  
12 in service of process and Zandian’s refusal in his motion to dismiss to disclose  
13 where he resided if he did not reside where he was served.<sup>28</sup> Margolin also showed  
14 Zandian held ownership interests in 21 parcels of real property throughout Nevada,  
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16  
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18

19  
20 <sup>19</sup> See R.A. at Vol. I, 12-13.

21 <sup>20</sup> See R.A. at Vol. I, 1-96.

22 <sup>21</sup> See R.A. at Vol. I, 97-98.

23 <sup>22</sup> See R.A. at Vol. I, 99-104.

24 <sup>23</sup> See J.A. at Vol. I, 15-42.

25 <sup>24</sup> See J.A. at Vol. I, 17.

26 <sup>25</sup> See J.A. at Vol. I, 18-20.

27 <sup>26</sup> See J.A. at Vol. I, 43-160.

28 <sup>27</sup> See J.A. at Vol. I, 46-50.

<sup>28</sup> See J.A. at Vol. I, 56, 79-80; *see also* J.A. at Vol. I, 161-164 (Zandian refused to tell the District Court where he resided).

1 totaling approximately 4,918.55 acres; that Zandian was an active owner, officer or  
2 manager of four Nevada businesses, one of which owned 640 acres of land in  
3 Churchill County; and that Zandian had acted as the resident agent, manager,  
4 owner, and officer of ten other Nevada businesses.<sup>29</sup>

6 On August 3, 2011, the default was set aside, but Zandian's motion to  
7 dismiss was denied.<sup>30</sup> On August 4, 2011, Margolin's counsel sent a letter to  
8 Zandian's counsel requesting he accept service and that he provide a current  
9 address for Zandian.<sup>31</sup> Zandian's counsel responded as follows:

11 We cannot accept service, nor can we give you Reza Zandian's  
12 current address. Except to indicate that he does not reside in Nevada  
13 at the present time and is not subject to the jurisdiction of the courts of  
14 this State...<sup>32</sup>

14 On August 11, 2011, Margolin filed an amended complaint and a motion to  
15 serve by publication.<sup>33</sup> On September 27, 2011, the District Court ordered service  
16 of process against all Defendants by publication.<sup>34</sup> All Defendants were served by  
17 publication by November 2011.<sup>35</sup>

21 \_\_\_\_\_  
22 <sup>29</sup> See J.A. at Vol. I, 47-50, 59, 92-160.

23 <sup>30</sup> See J.A. at Vol. I, 165-168.

24 <sup>31</sup> See R.A. at Vol. I, 148.

25 <sup>32</sup> See R.A. at Vol. I, 150.

<sup>33</sup> See J.A. at Vol. I, 169-176 (Amended Complaint); See R.A. at Vol. I, 105-157  
(Motion to Serve by Publication).

<sup>34</sup> See R.A. at Vol. I, 158-159.

<sup>35</sup> See J.A. at Vol. I, 177-193.

1 On November 16, 2011, Zandian filed a motion to dismiss.<sup>36</sup> Zandian  
2 argued lack of service and personal jurisdiction.<sup>37</sup> On December 5, 2011, Margolin  
3 filed an opposition and provided evidence of service and personal jurisdiction.<sup>38</sup>  
4  
5 On December 13, 2011, Zandian filed a reply and repeated his argument that  
6 service was not effectuated.<sup>39</sup>

7 On February 21, 2012, the District Court denied Zandian's motion to  
8 dismiss.<sup>40</sup> The District Court found he had been properly served and his property  
9 ownership and business dealings showed his forum activities were so substantial or  
10 continuous and systematic that he should be deemed present in the forum and  
11 therefore jurisdiction was appropriate.<sup>41</sup>

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13  
14 On March 6, 2012, Zandian filed a general denial to the amended complaint,  
15 including no affirmative defenses.<sup>42</sup> On March 14, 2012, the corporate Defendants  
16 filed a general denial to the amended complaint, also without any affirmative  
17 defenses.<sup>43</sup> On March 14, 2012, Zandian's counsel filed a motion to withdraw.<sup>44</sup>

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20 <sup>36</sup> See J.A. at Vol. II, 194-293.

21 <sup>37</sup> See J.A. at Vol. II, 194-200.

22 <sup>38</sup> See R.A. at Vols. I & II, 160-299.

23 <sup>39</sup> See R.A. at Vol. II, 350-357 (Zandian failed to disclose an address where he  
24 could be found or served).

25 <sup>40</sup> See J.A. at Vol. II, 294-302.

<sup>41</sup> See J.A. at Vol. II, 294-302.

<sup>42</sup> See J.A. at Vol. II, 303-305; *see also Clark Cnty. Sch. Dist. v. Richardson  
Const., Inc.*, 123 Nev. 382, 395, 168 P.3d 87, 96 (2007) (“Under NRCP 8(c), a  
defense that is not set forth affirmatively in a pleading is waived.”).

<sup>43</sup> See J.A. at Vol. II, 314-316.

1 The motion to withdraw provided Zandian's last known address as 8775 Costa  
2 Verde Blvd., San Diego, California 92122 (the "San Diego address").<sup>45</sup> On April  
3 26, 2012, the District Court granted the motion to withdraw.<sup>46</sup>  
4

5 On June 28, 2012, the District Court issued an order requiring counsel to  
6 enter an appearance on behalf of the corporate Defendants by July 15, 2012 or their  
7 general denial would be stricken.<sup>47</sup> There being no appearance, on September 14,  
8 2012, Margolin filed an application for entry of default against the corporate  
9 Defendants.<sup>48</sup> A default was entered against them on September 24, 2012.<sup>49</sup>  
10 Notice of entry of default was filed on September 27, 2012.<sup>50</sup> After an application  
11 for default judgment, a default judgment was entered against the corporate  
12 Defendants on October 31, 2012, with notice of entry filed on November 6, 2012.<sup>51</sup>  
13  
14

15 On July 16, 2012, Margolin served Zandian at the San Diego address with a  
16 first set of interrogatories,<sup>52</sup> a first set of requests for production of documents,<sup>53</sup>  
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20 <sup>44</sup> See J.A. at Vol. II, 317-322.

21 <sup>45</sup> See J.A. at Vol. II, 320. All subsequent papers and pleadings were mailed to the  
22 San Diego address, as set forth below.

23 <sup>46</sup> See J.A. at Vol. II, 323-328.

24 <sup>47</sup> See J.A. at Vol. II, 334-345.

25 <sup>48</sup> See J.A. at Vol. II, 346-353.

<sup>49</sup> See J.A. at Vol. II, 354-360.

<sup>50</sup> See J.A. at Vol. II, 361-371.

<sup>51</sup> See J.A. at Vol. II, 372-381.

<sup>52</sup> See J.A. at Vol. II, 390-403.

<sup>53</sup> See J.A. at Vol. II, 405-409.

1 and a first set of requests for admissions.<sup>54</sup> Having received no response to the  
2 written discovery, on September 10, 2012, Margolin mailed a meet and confer  
3 letter to Zandian at the San Diego address requesting a response.<sup>55</sup> Zandian never  
4 responded to the discovery requests or the letter.<sup>56</sup>

6 On December 14, 2012, Margolin filed and served a motion for sanctions  
7 pursuant to NRCPP 37.<sup>57</sup> Margolin requested the District Court strike the general  
8 denial of Zandian and award Margolin his fees and costs for bringing the motion.<sup>58</sup>

10 On January 15, 2013, the District Court issued an order striking the general  
11 denial of Zandian and awarded Margolin his fees and costs for bringing the motion  
12 for sanctions.<sup>59</sup> On January 17, 2013, notice of entry of the order striking the  
13 general denial was filed.<sup>60</sup> On February 20, 2013, Margolin filed an application for  
14 attorney's fees and costs, pursuant to the order striking Zandian's general denial.<sup>61</sup>  
16 On April 3, 2013, notice of entry of the order granting the fees and costs was  
17 filed.<sup>62</sup>

19 A default was entered against Zandian on March 28, 2013, and a notice of

21 <sup>54</sup> See J.A. at Vol. II, 411-417.

22 <sup>55</sup> See J.A. at Vol. II, 419-420.

23 <sup>56</sup> See J.A. at Vol. II, 390-391.

24 <sup>57</sup> See J.A. at Vol. II, 383-420.

25 <sup>58</sup> See J.A. at Vol. II, 383-420.

<sup>59</sup> See J.A. at Vol. II, 421-422.

<sup>60</sup> See J.A. at Vol. II, 423-428.

<sup>61</sup> See J.A. at Vol. III, 429-433, 434-441.

<sup>62</sup> See J.A. at Vol. III, 452-457.

1 entry of default was filed on April 5, 2013.<sup>63</sup> On April 17, 2013, Margolin filed an  
2 application for default judgment against all Defendants.<sup>64</sup> Zandian did not respond  
3 to the application for default judgment and a default judgment was entered on June  
4 24, 2013.<sup>65</sup> Notice of entry of the default judgment was served on Zandian on June  
5 26, 2013 and filed herein on June 27, 2013.<sup>66</sup>

7 On December 6, 2013, Zandian's new counsel wrote a letter to Margolin's  
8 counsel stating Zandian's intent to file a motion to set aside the default judgment.<sup>67</sup>

10 On December 11, 2013, Margolin filed a motion for judgment debtor  
11 examination and to produce documents.<sup>68</sup> Margolin pointed out the following  
12 important facts regarding Zandian's residency:

14 [I]t is clear that in John Peter Lee's motion to withdraw, he provided  
15 counsel and the Court with Zandian's last known address as 8775  
16 Costa Verde Blvd., San Diego, CA 92122. *See* Motion to Withdraw,  
17 dated 3/6/12, on file herein. Also, on April 11, 2012, Zandian and his  
18 business partners, including his new counsel in this matter, filed an  
19 easement where Zandian had his signature notarized in San Diego,  
20 CA. *See* Exhibit 2. In his fraudulent letter to the US Patent Office,  
21 dated December 5, 2007, Zandian provided his address as 8775 Costa  
Verde Blvd., Suite 501, San Diego, CA 92122. *See* Exhibit 3.  
Zandian signed a settlement agreement on June 19, 2008 and listed his  
address as 8775 Costa Verde Blvd., Suite 501, San Diego, CA 92122.  
*See* Exhibit 4.<sup>69</sup>

22 <sup>63</sup> *See* J.A. at Vol. III, 458-462.

23 <sup>64</sup> *See* J.A. at Vol. III, 463-539.

24 <sup>65</sup> *See* J.A. at Vol. III, 540-542.

25 <sup>66</sup> *See* J.A. at Vol. III, 543-545; *see also* R.A. at Vol. II, 358-363.

<sup>67</sup> *See* R.A. at Vol. II, 375.

<sup>68</sup> *See* R.A. at Vol. II, 364-413.

<sup>69</sup> *See* R.A. at Vol. II, 367, 378-413.

1 On December 19, 2013, over five and a half months after notice of entry of  
2 the default judgment, Zandian served his motion to set aside.<sup>70</sup> Zandian claimed he  
3 never received any written discovery or notice of the pleadings or papers in this  
4 matter after his counsel withdrew since he alleges he was residing in France from  
5 August 2011 to the present, and he alleged (without providing any evidence) that  
6 his former counsel provided an incorrect last known address when he withdrew.<sup>71</sup>  
7  
8

9 On January 9, 2014, Margolin filed an opposition to the motion to set  
10 aside.<sup>72</sup> Margolin noted Zandian did not provide any evidence that he lived in  
11 France at any time from August 2011 to the present.<sup>73</sup> Margolin provided  
12 substantial evidence the last known address provided by Zandian's counsel in the  
13 motion to withdraw was correct and Zandian continued to maintain the San Diego  
14 address since August of 2011, not France, as follows:  
15

- 16 • Check from Golden Enterprises to Zandian at 8775 Costa Verde  
17 Blvd, San Diego, CA, dated 10/31/12 and endorsed by  
18 Zandian;<sup>74</sup>
- 19 • Check from Golden Enterprises to Zandian at 8775 Costa Verde  
20 Blvd, San Diego, CA, dated 1/30/13 and endorsed by  
21 Zandian;<sup>75</sup>
- 22 • Wells Fargo withdrawal slip filled out and signed by Zandian,  
23 dated 2/20/13 (Wells Fargo does not have any branches in

24 <sup>70</sup> See J.A. at Vol. III, 546-562.

25 <sup>71</sup> See J.A. at Vol. III, 546-562.

<sup>72</sup> See J.A. at Vol. III, 570-643.

<sup>73</sup> See J.A. at Vol. III, 571-572.

<sup>74</sup> See J.A. at Vol. III, 588.

<sup>75</sup> See J.A. at Vol. III, 590.

1 France);<sup>76</sup>

- 2 • Check from and signed by Zandian to John Peter Lee, dated  
3 1/13/12, with 8775 Costa Verde Blvd, San Diego, CA, printed  
4 on the check;<sup>77</sup>
- 5 • Checks, dated 11/28/11, 12/2/11, 1/25/12, 2/29/12, 3/1/12,  
6 10/30/12, 1/15/13, showing Zandian maintained his 8775 Costa  
7 Verde Blvd, San Diego, CA, address, including checks to the  
8 IRS and the Washoe County Treasurer;<sup>78</sup>
- 9 • Wells Fargo bank statements from December 2011, March 2012  
10 and April 2012 showing the 8775 Costa Verde Blvd, San  
11 Diego, CA, address;<sup>79</sup>
- 12 • Wells Fargo/Visa statements, dated August 2011, August 2013,  
13 September 2013, October 2013 showing a San Diego address;<sup>80</sup>
- 14 • Visa statement, dated 4/10/13, showing Zandian made four  
15 purchases in California on 3/15/13 which is the same date  
16 Zandian alleges he filed the appeal with the French address;<sup>81</sup>
- 17 • Visa statements showing Zandian making many purchases in  
18 California, not France, in September and October of 2011;<sup>82</sup>
- 19 • Property summary screen for one of Zandian's Clark County  
20 properties currently listing his 8775 Costa Verde, San Diego,  
21 CA, address, not France;<sup>83</sup>
- 22 • Checks, dated 1/25/12, 1/24/13, 2/21/13, 2/24/13 and 6/30/13,  
23 from Zandian to the Secretary of State of California, United  
24 States Treasury, Employment Development Department, and  
25 the Internal Revenue Service, all with the 8775 Costa Verde,  
San Diego, CA, address, and all of the checks are written for  
Optima Technology Corp, which is another named defendant in  
this matter.<sup>84</sup>

<sup>76</sup> See J.A. at Vol. III, 592.

<sup>77</sup> See J.A. at Vol. III, 594.

<sup>78</sup> See J.A. at Vol. III, 596-602.

<sup>79</sup> See J.A. at Vol. III, 604-605.

<sup>80</sup> See J.A. at Vol. III, 607-613.

<sup>81</sup> See J.A. at Vol. III, 615-618; *see also* J.A. at Vol. III, 561-562 (Zandian's pro per notice of appeal showing French address was filed on March 15, 2013).

<sup>82</sup> See J.A. at Vol. III, 620-629.

<sup>83</sup> See J.A. at Vol. III, 631-632.

<sup>84</sup> See J.A. at Vol. III, 634-641; *see also* J.A. at Vol. III, 571-572; J.A. at Vol. III, 571, 580-586 (On February 13, 2013, in another motion to withdraw in an



1 On January 23, 2014, Zandian filed a reply in support of the motion to set  
2 aside, repeating his prior arguments, and adding “none of the evidence provided by  
3 Plaintiff demonstrates that the checks found in Plaintiff’s Exhibits 2, 3, 5, 6, and 12  
4 were sent from or received by Defendant Zandian in the United States.”<sup>85</sup> This  
5 argument was false, as Zandian wrote and signed the check in “Exhibit 5” on  
6 “1/13/2012,” the same date John Peter Lee endorsed and deposited the check with  
7 Bank of America on “1/13/12,” which could not have occurred if Zandian was in  
8 France.<sup>86</sup>

9  
10  
11 On February 6, 2014, the District Court denied Zandian’s motion to set  
12 aside.<sup>87</sup> Notice of entry of that order was served by mail on February 10, 2014.<sup>88</sup>  
13 Zandian’s appeal followed.

### 14 **SUMMARY OF THE ARGUMENT**

15  
16 What was clearly designed by Zandian to be a strategy of evasiveness and  
17 delay resulted in the District Court striking his answer, taking his default and  
18 denying his tardy plea to set the default judgment aside. His appeal has no more  
19 merit than his motion to set aside.  
20

21 The District Court’s ruling is tested under an abuse of discretion standard,  
22

23  
24 unrelated matter, Zandian’s counsel provided the Nevada Supreme Court with the  
25 same San Diego address as the last known address for Zandian).

<sup>85</sup> See J.A. at Vol. IV, 652.

<sup>86</sup> See J.A. at Vol. III, 594.

<sup>87</sup> See J.A. at Vol. IV, 672-681.

1 meaning it should only be reversed if it was clearly erroneous or not supported by  
2 substantial evidence. Zandian fails to meet this heavy burden of showing that the  
3 evidence before the District Court was not adequate to support its denial of his  
4 motion to set aside.  
5

6 This is why Zandian tries to distract the Court by focusing away from the  
7 evidence demonstrating he maintained his San Diego address and never updated  
8 the District Court or the parties with any new address. Substantial evidence shows  
9 his counsel provided an accurate last known address, and he maintained that last  
10 known address at all relevant times. Also, Margolin had a right to rely upon that  
11 last known address or the best known address according to public records.  
12

13 The District Court made factual findings based upon evidence that, among  
14 other things, all papers and pleadings were served at the San Diego address,  
15 Zandian received notice of all proceedings in this matter and he inexcusably waited  
16 almost six months to file the motion to set aside the default. Based upon the  
17 factual findings, Zandian could not meet his burden to obtain Rule 60(b) relief.  
18 Likewise, because the District Court's denial of Zandian's motion to set aside was  
19 supported by substantial evidence and was not clearly erroneous, Zandian cannot  
20 meet his burden on appeal.  
21

22 The District Court also properly found Zandian failed to provide any  
23  
24  
25

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<sup>88</sup> See J.A. at Vol. IV, 741-754.

1 evidence of mistake, inadvertence, surprise, or excusable neglect for failing to  
2 respond to discovery, the default judgment or any other papers filed in the District  
3 Court. Moreover, it was proper to find that Zandian’s own behavior prevented the  
4 case from being heard on the merits. The District Court’s order denying Zandian’s  
5 motion to set aside should be affirmed.

7 **ARGUMENT**

8  
9 **I. STANDARD OF REVIEW ON RULE 60(b) MOTION FOR**  
10 **RELIEF FROM DEFAULT**

11 “The district court has wide discretion in deciding whether to grant or deny a  
12 motion to set aside a judgment under NRCP 60(b). Its determination will not be  
13 disturbed on appeal absent an abuse of discretion.”<sup>89</sup>

14 A district court may relieve a party from a final judgment or order for  
15 grounds of “mistake, inadvertence, surprise, or excusable neglect.”<sup>90</sup> A district  
16 court must consider several factors before granting a NRCP 60(b)(1) motion: (1)  
17 prompt application to remove the judgment; (2) absence of an intent to delay the  
18 proceedings; (3) evidence of a lack of knowledge of procedural requirements on  
19 the part of the moving party; (4) moving party made the motion in good faith; and  
20  
21

22  
23 <sup>89</sup> *Stoecklein v. Johnson Elec., Inc.*, 109 Nev. 268, 271, 849 P.2d 305, 307 (1993)  
24 (*citing Union Petrochemical Corp. v. Scott*, 96 Nev. 337, 338, 609 P.2d 323  
25 (1980)); *see also Britz v. Consol. Casinos Corp.*, 87 Nev. 441, 445, 488 P.2d 911,  
914–15 (1971) (“[T]he trial judge is free to judiciously and reasonably exercise  
discretion in determining whether a default judgment should be set aside.”).

<sup>90</sup> NRCP 60(b)(1).

1 (5) the state’s “basic policy for resolving cases on their merits when possible.”<sup>91</sup>

2 However, “[l]itigants and their counsel may not properly be allowed to disregard  
3 process or procedural rules with impunity.”<sup>92</sup>  
4

5 Finally, a district court’s “findings of fact shall not be set aside unless they  
6 are clearly erroneous and not supported by substantial evidence.”<sup>93</sup> Of course,  
7 “substantial evidence” is merely such evidence “which a reasonable mind might  
8 accept as adequate to support a conclusion.”<sup>94</sup>  
9

10 **II. ZANDIAN FAILED TO MEET HIS BURDEN ON HIS RULE**  
11 **60(b) MOTION**

12 In order to prevail on his Rule 60(b) motion, Zandian had the burden to  
13 prove, by a preponderance of the evidence, that his and his counsel’s conduct  
14 amounted to “mistake, inadvertence, surprise or excusable neglect.”<sup>95</sup> Zandian did  
15  
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17  
18

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19 <sup>91</sup> *Kahn v. Orme*, 108 Nev. 510, 513, 835 P.2d 790, 792–93 (1992) (emphasis and  
20 internal quotations omitted). Also, the Nevada Supreme court in *Kahn* discussed  
21 another factor: “the moving party must promptly tender a meritorious defense to  
22 the claim for relief.” 108 Nev. at 513, 835 P.2d at 793 (emphasis and internal  
23 quotations omitted). However, the meritorious defense requirement has since been  
24 overruled. *See Epstein v. Epstein*, 113 Nev. 1401, 1405, 950 P.2d 771, 773 (1997).

25 <sup>92</sup> *Lentz v. Boles*, 84 Nev. 197, 200, 438 P.2d 254, 256–57 (1968).

<sup>93</sup> *Bahena v. Goodyear Tire & Rubber*, 126 Nev. Adv. Op. 26, 235 P.3d 592, 599  
(2010).

<sup>94</sup> *Weaver v. State of Nevada*, 121 Nev. 494, 501, fn. 12, 117 P.3d 193, 198, fn. 12  
(2005).

<sup>95</sup> *Kahn v. Orme*, 108 Nev. 510, 513-14, 835 P.2d 790 792-93 (1992).

1 not meet the requirements set forth in *Kahn* to compel the court to set aside the  
2 judgment.<sup>96</sup>

3  
4 The District Court expressly found Zandian received notice of all  
5 proceedings, did not promptly apply to remove the judgment, failed to show he  
6 lacked intent to delay, had sufficient knowledge to act responsibly regarding  
7 procedural requirements, lacked good faith, demonstrated inexcusable neglect, and  
8 disregarded the process and procedural rules of this matter in such a manner so as  
9 to warrant a denial of the motion to set aside.<sup>97</sup> Alone, any of these would have  
10 been sufficient to deny the relief requested. Taken together, Zandian’s motion was  
11 untenable, as is his appeal.  
12

13  
14 **A. Zandian Lacked Diligence And Failed To Act Promptly In  
15 Seeking Relief From The Default Judgment**

16 “Want of diligence in seeking to set aside a judgment is ground enough for  
17 denial of such a motion.”<sup>98</sup> Thus, even though a motion to set aside a judgment  
18 may be filed within the six month deadline provided for in NRCP 60(b), a party  
19 can still fail to act promptly.<sup>99</sup> In fact, “the six-month period represents the  
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21  
22

23 <sup>96</sup> See J.A. at Vol. IV, 749-753.

24 <sup>97</sup> See J.A. at Vol. IV, 749-753.

25 <sup>98</sup> See *Kahn*, 108 Nev. at 514, 835 P.2d at 793 (citing *Union Petrochemical*, 96 Nev. at 339, 609 P.2d at 324 (citing *Lentz*, 84 Nev. 197, 438 P.2d 254; *Hotel Last Frontier v. Frontier Prop.*, 79 Nev. 150, 380 P.2d 293 (1963)).

<sup>99</sup> See *Kahn*, 108 Nev. at 514, 835 P.2d at 793.

1 extreme limit of reasonableness.”<sup>100</sup>

2 Without a viable excuse, Zandian waited nearly six months before filing the  
3 motion to set aside.<sup>101</sup> He claims he did not file the motion to set aside earlier  
4 because he did not receive notice of the default judgment until he came back from  
5 France on a business trip.<sup>102</sup> However, substantial evidence supports the District  
6 Court’s finding that Zandian’s claims regarding lack of notice were incorrect.<sup>103</sup>  
7  
8

9 First Judicial District Court Rule 22(3) expressly states that “[a]ny form of  
10 order permitting withdrawal of an attorney submitted to the Court for signature  
11 shall contain the address at which the party is to be served with notice of all further  
12 proceedings.” In other words, Margolin “had a right to rely on the address given  
13 by Zandian’s prior attorney.” See J.A. at Vol. IV, 750; see also *Tulsa Professional*  
14 *Collection Services v. Pope*, 485 U.S. 478, (1988) (Court noted it “[had] repeatedly  
15 recognized that mail service is an inexpensive and efficient mechanism that is  
16 reasonably calculated to provide actual notice.”); *Greene v. Lindsey*, 456 U.S. 444,  
17 455 (1982) (“[N]otice by mail may reasonably be relied upon to provide interested  
18  
19  
20

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21 <sup>100</sup> *Stoecklein*, 109 Nev. at 271, 849 P.2d at 307 (citing *Union Petrochemical*, 96  
22 Nev. at 339, 609 P.2d at 324).

23 <sup>101</sup> See J.A. at Vol. IV, 749-753; see also See J.A. at Vol. III, 546-562.

24 <sup>102</sup> See J.A. at Vol. III, 555.

25 <sup>103</sup> See above section Procedural Background; see also J.A. at Vol. II, 320, 333,  
337, 340, 345, 348, 353, 360, 363, 371, 377, 389, 393, 403, 409, 417, 419, 425;  
J.A. at Vol. III, 433, 437, 443, 449, 454, 460, 475, 478, 493, 498, 545, 570-578,  
580-586, 588-643; J.A. at Vol. IV, 676-680, 690-694, 709-713, 735-739, 749-753;  
R.A. at Vol. II, 367-368, 378-387, 389, 392-410.

1 persons with actual notice of judicial proceedings.”). Nevada law is in accord. *See*  
2 *Mitchell v. District Court*, 82 Nev. 377, 381–82, 418 P.2d 994, 997 (1966); NRS  
3 47.250(13) (presumption “[t]hat a letter duly directed and mailed was received in  
4 the regular course of the mail”); *Durango Fire Protection v. Troncoso*, 120 Nev.  
5 658, 663, 98 P.3d 691, 694 (2004) (service is complete upon mailing, citing NRCP  
6 5(b)); *see also* 66 C.J.S. *Notice* § 15 n. 1 (2007) (“A party has a duty to keep  
7  
8 abreast of all proceedings in his or her case from service of the original process  
9 until final judgment; included in this duty is the party’s responsibility to keep the  
10 court or counsel informed of any address changes.”).

11  
12 The District Court also found no evidence supported Zandian’s claim that he  
13 lacked knowledge of this matter.<sup>104</sup> Even if Zandian was living in France, for  
14 which the District Court found “no competent evidence,” Zandian was required to  
15 provide the District Court and the parties with any new address.<sup>105</sup> However,  
16 Zandian never provided notice of any address change.<sup>106</sup> In fact, substantial  
17  
18  
19  
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21

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22 <sup>104</sup> *See* J.A. at Vol. IV, 749-750.

23 <sup>105</sup> *See* J.A. at Vol. IV, 750; *Mitchell*, 82 Nev. at 377, 418 P.2d at 994; NRS  
24 47.250(13); *Durango*, 120 Nev. at 663, 98 P.3d at 694; NRCP 5(b); 66 C.J.S.  
25 *Notice* § 15 n. 1. Also, providing another court and another lawyer with notice of  
the French address did not provide legal notice that the San Diego address was not  
the proper address.

<sup>106</sup> *See* J.A. at Vol. IV, 750.

1 evidence shows Zandian maintained the San Diego address.<sup>107</sup>

2 It is undisputed that all papers and pleadings were served by mail to  
3 Zandian's last known address of record.<sup>108</sup> Under NRCP 5(b), service by mail is  
4 complete upon mailing.<sup>109</sup> Therefore, substantial evidence supports the District  
5 Court's finding that Zandian received notice of the proceedings and his failure to  
6 respond was inexcusable neglect.<sup>110</sup>

7  
8  
9 With regard to the notice of intent to take a default, the notice requirement of  
10 NRCP 55 was also fulfilled as Margolin also served written notice of the  
11 application for default judgment to Zandian's last known address.<sup>111</sup> The District  
12 Court also correctly found NRCP 55 was likely not implicated since the judgment  
13 ultimately resulted from sanctions arising from Zandian's failure to respond to  
14 discovery.<sup>112</sup>

15  
16  
17 <sup>107</sup> See J.A. at Vol. III, 588-641; J.A. at Vol. III, 571-572; J.A. at Vol. III, 571, 580-  
18 586; R.A. at Vol. II, 380 (In January 2012, Zandian signed an affidavit in San  
19 Diego, which could not have been done if he were in France since August 2011).

20 <sup>108</sup> See J.A. at Vol. IV, 750; *see also* J.A. at Vol. II, 320, 333, 337, 340, 345, 348,  
21 353, 360, 363, 371, 377, 389, 393, 403, 409, 417, 419, 425; J.A. at Vol. III, 433,  
22 437, 443, 449, 454, 460, 475, 478, 493, 498, 545, 570-578, 580-586, 588-643; J.A.  
23 at Vol. IV, 676-680, 690-694, 709-713, 735-739, 749-753; R.A. at Vol. II, 367-  
24 368, 378-387, 389, 392-410.

25 <sup>109</sup> See NRCP 5(b)(2)(B) ("Service under this rule is made by...[m]ailing a copy to  
... the party at his or her last known address. Service by mail is complete on  
mailing.").

<sup>110</sup> See J.A. at Vol. IV, 750.

<sup>111</sup> See J.A. at Vol. IV, 750.

<sup>112</sup> See J.A. at Vol. IV, 750 (*citing Durango*, 120 Nev. at 658, 98 P.3d 691  
(defendant's answer stricken as sanction for failure to appear at hearings rather



1           Therefore, Zandian cannot credibly claim to have made a prompt application  
2 for relief from the default judgment in light of the many notices Margolin and the  
3 District Court provided him. Zandian ignored the notices. His intentional delays  
4 eviscerate any claim that he acted promptly. Therefore, the District Court properly  
5 found Zandian’s almost six month delay in filing the motion to set aside was  
6 inexcusable and not prompt.  
7

8  
9           **B.   Zandian Failed To Show He Lacked Intent To Delay**

10           The *Kahn* case demonstrates it is Zandian’s burden “to establish the absence  
11 of an intent to delay.”<sup>113</sup> Zandian offered no evidence to suggest—much less  
12 establish—that he did not intend to delay. In fact, the opposite is true.  
13

14           The entire proceedings in the District Court show Zandian’s intent was to  
15 delay the proceedings.<sup>114</sup> Both he and his counsel evaded and refused to accept  
16 service of process.<sup>115</sup> Then, when his first counsel withdrew, Zandian completely  
17

18 than default judgment, thus, written notice before entry of default judgment not  
19 applicable)); *see also* NRCp 37(b)(2)(C) (allowing District Court to “render[] a  
20 judgment by default against the disobedient party”). Also, a judgment of default as  
21 a sanction is not void even when there was no written notice and motion requesting  
22 such relief. *Durango*, 120 Nev. at 662, 98 P.3d 87, 96 (finding that “no prior  
23 notice was required and, thus, the judgment is not void”).

24 <sup>113</sup> *Kahn*, 108 Nev. at 515, 835 P.2d 790, 792-93 (1992).

25 <sup>114</sup> *See for example* J.A. at Vol. I, 11-14; R.A. at Vol. I, 13, 105-159, 132-133, 148,  
150; J.A. at Vol. I, 15-42; J.A. at Vol. I, 43-160; *See* J.A. at Vol. II, 194-293; J.A.  
at Vol. II, 294-302; J.A. at Vol. II, 317-322; J.A. at Vol. II, 421-422; J.A. at Vol.  
III, 540-42; J.A. at Vol. III, 546-562; J.A. at Vol. III, 570-643.

<sup>115</sup> *See* J.A. at Vol. I, 11-14; R.A. at Vol. I, 13, 105-159, 132-133, 148, 150; J.A. at  
Vol. I, 15-42; J.A. at Vol. I, 43-160; *See* J.A. at Vol. II, 194-293; J.A. at Vol. II,

1 ignored this matter for several years until he filed the motion to set aside.<sup>116</sup> He did  
2 not respond to any of the papers and pleadings, including the discovery requests,  
3 motions, applications for judgment, or notices regarding the judgments.<sup>117</sup> Then,  
4 he waited nearly six months to file the motion to set aside.<sup>118</sup>

6 As a result, this Court should find Zandian’s intentional delay prevents him  
7 from demonstrating he possessed such intent.

8  
9 **C. Zandian Cannot Establish Ignorance Of The Procedural  
Requirements**

10 The *Kahn* court explained that when “all that was required” was for the party  
11 “to either personally appear .... or obtain counsel to appear on his behalf,” the  
12 “failure to obtain new representation or otherwise act on [one’s] own behalf is  
13 inexcusable.”<sup>119</sup> As this Court has explained:

14  
15 [W]e are not confronted here with some subtle or technical aspect  
16 of procedure, ignorance of which could readily be excused. The  
17 requirements of the rule are simple and direct. *To condone the*  
18 *actions of a party who has sat on its rights only to make a last-*  
19 *minute rush to set aside judgment would be to turn NRCP 60(b)*  
20 *into a device for delay rather than the means for relief from an*  
*oppressive judgment that it was intended to be.*<sup>120</sup>

21 294-302; J.A. at Vol. II, 317-322; J.A. at Vol. II, 421-422; J.A. at Vol. III, 540-42;  
22 J.A. at Vol. III, 546-562; J.A. at Vol. III, 570-643.

23 <sup>116</sup> See J.A. at Vol. II, 317-322; J.A. at Vol. III, 546-562.

24 <sup>117</sup> See J.A. at Vol. III, 549-550, 553-556; J.A. at Vol. IV, 749-753.

25 <sup>118</sup> See J.A. at Vol. III, 546-562.

<sup>119</sup> *Kahn*, 108 Nev. at 515, 835 P.2d 790, 792-93 (1992).

<sup>120</sup> *Id.* (citing *Union*, 96 Nev. at 339, 609 P.2d at 324 (citing *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979); *Central Operating Co. v. Utility Workers of America*, 491 F.2d 245 (4th Cir.1974)) (emphasis added in original)).

1 In short, where a party “had sufficient knowledge to act responsibly,” his  
2 subsequent failure to act responsibly cannot be excused under the guise that “he  
3 was ignorant of procedural requirements.”<sup>121</sup> All that was required of Zandian was  
4 to either personally respond to the discovery and motions or obtain counsel to  
5 appear on his behalf. He previously retained counsel to defend this action and  
6 retained new counsel to set aside the judgment.<sup>122</sup> He even filed his own notice of  
7 appeal in another case.<sup>123</sup> His failure to obtain new counsel or otherwise act on his  
8 own behalf shows he cannot demonstrate he excusably lacked knowledge of  
9 procedural requirements.  
10  
11

#### 12 **D. Zandian Did Not Act In Good Faith**

13  
14 The *Kahn* court found good faith could not be shown when there was no  
15 legitimate reason for failing to appear at the hearing and no reason for waiting five  
16 months to move for relief from default.<sup>124</sup>  
17

18 The District Court found Zandian had not provided a reasonable explanation  
19 for waiting over five months to obtain other counsel despite having knowledge of  
20 the judgment entered against him. It was inexcusable for Zandian not to respond to  
21 the discovery requests, motions and default judgment in a timely manner.  
22 “Zandian has only demonstrated inexcusable neglect by his willful failure to  
23

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24  
25 <sup>121</sup> *Id.*

<sup>122</sup> *See* J.A. at Vol. II, 194-293; J.A. at Vol. III, 546-562.

<sup>123</sup> *See* J.A. at Vol. IV, 660.

1 respond to, and participate in, th[e] action.”<sup>125</sup> Accordingly, the District Court  
2 correctly determined “Zandian lacked good faith in contesting th[e] action.”<sup>126</sup>

### 3 4 **E. Zandian Prevented A Trial On The Merits**

5 Margolin does not dispute that “good public policy dictates cases be  
6 adjudicated on their merits.”<sup>127</sup> However, the policy has reasonable limits:

7 Litigants and their counsel may not properly be allowed to  
8 disregard process or procedural rules with impunity. Lack of good  
9 faith or diligence, or lack of merit in the proposed defense, may  
10 very well warrant a denial of the motion for relief from the  
11 judgment.<sup>128</sup>

12 Zandian disregarded the process and procedural rules of this matter “with  
13 impunity.”<sup>129</sup> Overwhelming evidence shows his complete failure to respond and  
14 recalcitrant disregard of the judicial process, which prejudiced Margolin.<sup>130</sup> He  
15 intentionally prevented this matter from being heard on the merits. As a result, the  
16

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17 <sup>124</sup> *Kahn*, 108 Nev. at 515, 835 P.2d 790, 792-93 (1992).

18 <sup>125</sup> *See* J.A. at Vol. IV, 752.

19 <sup>126</sup> *See* J.A. at Vol. IV, 752.

20 <sup>127</sup> *See Kahn*, 108 Nev. at 516, 835 P.2d at 794 (citing *Hotel Last Frontier*, 79 Nev.  
21 at 155–56, 380 P.2d at 295) (original emphasis).

22 <sup>128</sup> *Kahn*, 108 Nev. at 516, 835 P.2d at 794 (citing *Lentz*, 84 Nev. at 200, 438 P.2d  
23 at 256 (1968)).

24 <sup>129</sup> *See* J.A. at Vol. IV, 752; *see also above*.

25 <sup>130</sup> *See* J.A. at Vol. IV, 752; *see also Foster v. Dingwall*, 126 Nev. Adv. Op. 6, 227  
P.3d 1042, 1049 (Nev. 2010) (citing *Hamlett v. Reynolds*, 114 Nev. 863, 865, 963  
P.2d 457, 458 (1998) (upholding strike order where defaulting party’s “constant  
failure to follow [the court’s] orders was unexplained and unwarranted”); *In re  
Phenylpropanolamine (PPA) Products*, 460 F.3d 1217, 1236 (9th Cir. 2006)  
(holding “[p]rejudice from unreasonable delay is presumed” and failure to comply  
with court orders mandating discovery “is sufficient prejudice”)).

1 policy of adjudicating cases on the merits would not be advanced by setting aside  
2 the default judgment and rewarding him for his repeated evasive behavior. As  
3 evidenced by the record, the ultimate sanctions and resulting judgment were  
4 necessary to demonstrate to Zandian and future litigants that they are not free to act  
5 with wayward disregard of a court's orders.<sup>131</sup>

#### 7 **F. A Dispositive Sanction Was Warranted**

8  
9 Zandian has appealed only from the denial of his motion to set aside. This  
10 Court has clearly defined the scope of issues to be considered on appeal, stating  
11 that “[p]oints not urged in the district court will not be entertained for the first time  
12 on appeal.”<sup>132</sup> The reasoning for this rule is obvious and clear:

13  
14 The respondent, who has had no opportunity to address these new  
15 theories would be prejudiced if they were to be given consideration by  
16 us [the Supreme Court]. We will not consider the validity of  
17 appellant's [new] theories . . .<sup>133</sup>

18 Simply, issues not raised in the District Court are not properly before this  
19 Court.<sup>134</sup> For the first time on appeal, Zandian argues *Young v. Johnny Ribeiro*

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21 <sup>131</sup> See J.A. at Vol. IV, 753; see also *Foster*, 126 Nev. Adv. Op. 6, 227 P.3d at  
22 1049.

23 <sup>132</sup> *Gibbons v. Martin Martin*, 91 Nev. 269, 270, 534 P.2d 915 (1975).

24 <sup>133</sup> *Id.* at 270-71.

25 <sup>134</sup> *Monroe, Ltd. v. Central Telephone Company*, 91 Nev. 450, 455, 538 P.2d 152,  
155 (1975); see also *See Durango*, 120 Nev. at 661, 98 P.3d 87, 96 (2007) (court  
not obligated to address new argument that default judgment void); *Securities and  
Exchange Commission v. Worthen*, 98 F.3d 480, 484 (9th Cir. 1996) (refusing to  
consider due process arguments raised for the first time on appeal).

1 *Building*<sup>135</sup> applies to the order striking his general denial and that the order failed  
2 to include the *Young* factors. Even if Zandian's new argument was considered –  
3 which it should not be - the facts and circumstances of this case discussed above do  
4 not require a *Young* analysis.<sup>136</sup>

5  
6 As stated above, the order striking the general denial came after several  
7 motions to dismiss, a motion to serve by publication, a motion to withdraw, and  
8 other pleadings. Zandian received notice of all relevant proceedings, including the  
9 written discovery and the motion for sanctions. Zandian failed to respond to  
10 anything after his initial counsel withdrew. As a result, the District Court struck  
11 the general denial. Striking the general denial was more for not responding to the  
12 lawsuit than a discovery sanction. Therefore, *Young* is inapplicable. Under the  
13 circumstances, the terminating sanction and the resulting default judgment were  
14 appropriate.  
15  
16

## 17 CONCLUSION

18  
19 Zandian failed to meet his burden in demonstrating by a preponderance of  
20 the evidence each of the criteria for obtaining Rule 60(b) relief from default. In his  
21  
22

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23 <sup>135</sup> 106 Nev. 88, 787 P.2d 777 (1990).

24 <sup>136</sup> See *Clark County School District v. Richardson Construction*, 123 Nev. 382,  
25 395, 168 P.3d 87, 96 (2007) (*Young* analysis not required in reviewing sanctions  
ordered by the district court striking all affirmative defenses raised by the  
appellant)

1 appeal, Zandian fails to meet his burden to demonstrate that the District Court  
2 abused its discretion in denying him such relief.

3  
4 Therefore, Margolin respectfully requests this Court affirm the District  
5 Court's ruling denying the motion to set aside the default judgment.

6 Dated this 17<sup>th</sup> day of November, 2014.

7  
8 WATSON ROUNDS, P.C.

9  
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1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this answering brief, and to the best of my  
3 knowledge, information, and belief, it is not frivolous or interposed for any  
4 improper purpose. I further certify that this brief complies with all applicable  
5 Nevada Rules of Appellate Procedure, in particular NRAP 28 (e), which requires  
6 every assertion in the brief regarding matters in the record to be supported by  
7 appropriate references to the record or appeal. I understand that I may be subject  
8 to sanctions in the event that the accompanying brief is not in conformity with the  
9 requirements of Nevada Rules of Appellate Procedure.  
10  
11

12 The brief complies with formatting requirements of Rule 32(a)(4), typeface  
13 requirements of Rule 32(a)(5), and type style requirements of Rule 32(a)(6),  
14 because this brief has been prepared in a proportionally spaced typeface using  
15 Times New Roman, 14-point font. I further certify that this brief complies with the  
16 page limitations of NRAP 32(a)(7), because it does not exceed thirty (30) pages.  
17  
18

19 Dated this 17<sup>th</sup> day of November, 2014.

20 WATSON ROUNDS, P.C.

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22 Matthew D. Francis, Esq.

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(1), I declare that I am an employee of Watson Rounds and on this 17<sup>th</sup> day of November, 2014, I served a copy of the foregoing *Respondent's Opening Brief* by Nevada Supreme Court CM/ECF Electronic Filing addressed to each of the following:

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DATED: November 17, 2014

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